

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
December 18, 2013**

The Bismarck Planning & Zoning Commission met on December 18, 2013 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Mike Donahue, Vernon Laning, Mike Schwartz, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioners Doug Lee and Ken Selzler were absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Jason Tomanek – Planner, Jenny Wollmuth – Planner, Hilary Balzum – Community Development Office Assistant and Charlie Whitman – City Attorney.

Others present were Taylor Rosh, Jason Haskins, Jenn Astle, Kent Orvik, Mike Fazekas, Casey Leingang, Jarett Kessler, Don Reuter, Tess Imhoff, Joann Millner and Wade Felton.

MINUTES

Chairman Yeager called for consideration of the minutes of the November 20, 2013 meeting.

MOTION: Commissioner Bullinger made a motion to approve the minutes of the November 20, 2013 meeting as received. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATION

- A. SATTLER SUNRISE 10TH ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. LOTS 1 & 2, BLOCK 1, HAMILTON’S FIRST ADDITION – ZONING CHANGE**
- C. LANDSCAPING AND SCREENING – ZONING ORDINANCE TEXT AMENDMENT**
- D. DOWNTOWN DISTRICTS – ZONING ORDINANCE TEXT AMENDMENT**

Chairman Yeager called for consideration of the following consent agenda items:

- A. Sattler Sunrise 10th Addition – Zoning Change and Preliminary Plat
- B. Lots 1 & 2, Block 1, Hamilton’s First Addition – Zoning Change
- C. Landscaping and Screening – Zoning Ordinance Text Amendment
- D. Downtown Districts – Zoning Ordinance Text Amendment

MOTION: Commissioner Schwartz made a motion to approve consent agenda items A, B, C and D, granting tentative approval and/or calling for public hearings on the items as recommended by staff. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – FINAL PLAT –
FAZEKAS SUBDIVISION**

Chairman Yeager called for the continued public hearing on the final plat for Fazekas Subdivision. The proposed plat is two lots in one block on 3.128 acres and is located southeast of Bismarck, west of England Street and south of Scout Street.

Ms. Wollmuth provided an overview of the request, including the following findings:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer with written concurrence from the County Engineer.
3. The proposed subdivision is generally consistent with the Fringe Area Road Master Plan for this area, which identifies England Street as a north-south arterial roadway.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include rural residential to the north, south, east and west.
5. The subdivision proposed for the property would be served by South Central Regional Water District and would have access to England Street via an existing private roadway; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice

Ms. Wollmuth stated that based on these findings, staff recommends approval of the final plat for Fazekas Subdivision, including the granting of a waiver from ghost platting requirements.

Commissioner Laning asked for a brief description of ghost platting. Ms. Wollmuth said for those areas located in the Urban Service Area Boundary, a ghost plat shows how the rural

residential lots could be further subdivided into urban residential lots upon annexation and provision of municipal services.

Chairman Yeager opened the public hearing.

There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the final plat for Fazekas Subdivision, including the granting of a waiver from ghost platting requirements. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE –
LOT 7, BLOCK 41, NOTHERN PACIFIC 2ND ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the RM30 – Residential zoning district to the RT – Residential zoning district on Lot 7, Block 41, Northern Pacific 2nd Addition. The property is located in central Bismarck, at the northeast intersection of North 5th Street and East Avenue B.

Ms. Wollmuth provided an overview of the request, including the following findings:

1. The proposed zoning change is located within the developed portion of the community and is outside the boundaries of the Land Use Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include the Veterans Memorial Public Library to the south across East Avenue B, a multi-family residence / yoga studio to the west across North 5th Street, an apartment complex to the north and parking lot to the east.
3. The property is annexed and is served by municipal services; therefore, it would not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the zoning change for Lot 7, Block 41, Northern Pacific 2nd Addition.

Chairman Yeager opened the public hearing.

There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve the zoning change from the RM30 – Residential zoning district to the RT – Residential zoning district on Lot 7, Block 41, Northern Pacific 2nd Addition. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE –
LOTS 1-3, BLOCK 1, SONNET HEIGHTS SUBDIVISION**

Chairman Yeager called for the public hearing for a zoning change from the RM15-Residential zoning district to the RM20-Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision.

Ms. Wollmuth then provided an overview of the request and the following findings:

1. The proposed zoning is consistent with the Land Use Plan, which identifies this area as residential (land use portion of the US Highway 83 Transportation Corridor Study).
2. The proposed zoning change would be not compatible with adjacent land uses. In particular, the proposed bulk and density of 20 units per acre is not compatible with the single and two-family residential uses located south of Lot 3 and south across Niagara Drive. Adjacent land uses include a combination of single and two-family homes to the south, undeveloped multi-family residentially zoned property (RM15) to the east and undeveloped agricultural land to the west and north.
3. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services, provided 57th Avenue NE is constructed and paved prior to development.
4. The proposed zoning change may adversely affect property in the vicinity. In particular, the single and two-family homes located south of the proposed zoning change may be adversely affected by higher density development located adjacent to Lot 3 and across Niagara Drive to the south.
5. The proposed zoning change is not consistent with the general intent and purpose of the zoning ordinance. The zoning ordinance discourages incompatible land uses in close proximity to one another without the use of transitional zoning. In particular, the property to the south of the proposed zoning change is zoned R10 – Residential and is being developed as single and two-family homes. A single-family dwelling was

constructed in July 2013 on the lot to the south of Lot 3, adjacent to the proposed zoning change.

6. The proposed zoning change is not consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, increasing the density to from 15 units per acre to 20 units per acre is contrary to the concepts of transitional zoning, given the fact that there would no longer be a zoning transition between the higher density multi-family and the single and two-family residential homes to the south.

Ms. Wollmuth said based on these findings, staff recommends denial of the zoning change from the RM15-Residential zoning district to the RM20-Residential zoning district on Lots 1-3, Block 1, Sonnet Heights Subdivision.

Ms. Wollmuth distributed comments from Jacelyn Brown and Berna Vetter received via e-mail, attached as Exhibits A and B.

Commissioner Atkinson asked if the zoning directly south of the proposed change is R10-Residential. Ms. Wollmuth said it is Superior Drive and then R10-Residential zoning directly adjacent; however a single family dwelling has been constructed there.

Commissioner Waldoch asked if it is known when 57th Avenue NE will be completely finished. Commissioner Bullinger said Burleigh County graded it recently with the intention of having it completely done in a year.

Chairman Yeager opened the public hearing.

Taylor Rosh said this same proposal was presented a year ago and it was denied. He said the only person who supported it was the developer. He said traffic is already increasing in the area and with the amount of small children in the neighborhood, he is very concerned about their safety. He said Mr. Felton claims their concerns are unfounded but he does not live there himself and only wants the proposed apartment complex to turn a profit.

Jason Haskins said his concerns are similar to those of Mr. Rosh. He also feels there is not enough of a buffer between the zoning districts to bring in a high capacity apartment building.

Casey Langdon said he has concerns of too much traffic, property values decreasing and the safety of the children in the area. He said he feels the developer can buy more appropriately zoned land elsewhere.

Mr. Felton said the zoning change that he proposed a year ago was for RM30-Residential zoning with the understanding that RM20-Residential zoning would be an option. He said the current RM15-Residential zoning will allow 33 rental units and RM20-Residential could be with the condition of only allowing 36 units, as it is his desire to construct a 36-unit apartment building. He said regardless of the zoning, a multi-family dwelling will be built with either 33 or 36 units.

There being no further comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Donahue made a motion to deny the zoning change from the RM15-Residential zoning district to the RM20-Residential zoning district for Lot 1-3, Block 1, Sonnet Heights Subdivision. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT –
LOTS 4-6, BLOCK 1, EDGEWOOD VILLAGE 7TH ADDITION.**

Chairman Yeager called for the public hearing for a special use permit for a child care center to be located on Lots 4-6, Block 1, Edgewood Village 7th Addition. The property is located in northeast Bismarck, along the west side of Nebraska Drive and south side of Knudsen Loop.

Ms. Wollmuth then provided an overview of the request and the following findings:

1. A child care center is allowed as a special use in the R10 – Residential zoning district, provided specific conditions are met. The proposed child care center meets the provisions outlined in Section 14-03-08(4)(q) of the City Code of Ordinances.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties provided the play area is setback 20 feet from the property line and a buffer yard is installed per city requirements.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic; in particular, adequate off-street parking would be provided.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit to operate a child care center on Lots 4-6, Block 1, Edgewood Village 7th Addition, with the following conditions:

1. The construction and operation of the child care center must meet all applicable requirements for such a use in the R10 – Residential zoning district.
2. Development of the site must generally conform to the site plan submitted with the application.

Chairman Yeager opened the public hearing.

Ms. Wollmuth distributed comments from Nathan Jones and Linda Gerhardt received via e-mail, attached as Exhibits C and D.

There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the special use permit to operate a child care center on Lots 4-6, Block 1, Sonnet Heights Subdivision, with the following conditions: 1) The construction and operation of the day care center must meet all applicable requirements for such a use in the R10 – Residential zoning district. as highlighted in the staff report and 2) Development of the site must generally conform to the site plan submitted with the application. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT –
LOT 1, BLOCK 2, HAY CREEK COMMERCIAL PARK ADDITION**

Chairman Yeager called for the public hearing for a special use permit for a drive-through window to be located on Lot 1, Block 2, Hay Creek Commercial Park Addition. The property is located in north Bismarck, along the south side of East LaSalle Drive and the east side of US Highway 83.

Ms. Wollmuth provided an overview of the request, including the following findings:

1. A drive-through window is allowed as a special use in the CG – Commercial zoning district, provided specific conditions are met. The proposed drive-through window meets all six provisions outlined in Section 14-03-08(4)(g) and meets the required vehicle stacking outlined in Section 14-03-10(2) of the City Code of Ordinances (Zoning).
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.

4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. This use would not cause a negative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public street and provide for appropriate on-site circulation of traffic; in particular, adequate off-street parking would be provided.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit for a drive-through window to be located on Lot 1, Block 2, Hay Creek Commercial Park Addition with the following conditions:

1. The construction and operation of the drive-through window must meet all applicable requirements for such a use in the CG – Commercial zoning district.
2. Development of the site must generally conform to the site plan submitted with the application.

Chairman Yeager opened the public hearing. There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Atkinson made a motion to approve the special use permit for a drive-through window to be located on Lot 1, Block 2, Hay Creek Commercial Park Addition, with the following conditions: 1) The construction and operation of the drive-through window must meet all applicable requirements for such a use in the CG – Commercial zoning district and 2) Development of the site must generally conform to the site plan submitted with the application. Commissioner Laning seconded the motion and the request was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – ZONING ADMINISTRATOR REFERENCES/MULTIPLE SECTIONS OF TITLE 14

Chairman Yeager called for the public hearing on a zoning ordinance text amendment relating to Zoning Administrator/Multiple Sections of Title 14.

Mr. Hokenstad explained that the amendment differentiates between Zoning Official and Building Official references and clarifies responsibilities. He said with the amount of

permitting being done recently, a definitive Zoning Administrator position is needed and will allow the Building Official time to focus on permitting and building requirements.

Commissioner Laning said he recognizes how busy the permitting business has been lately, but he wonders if the creation of a position is relevant in the event that business slows down drastically.

Mr. Hokenstad explained that no new staff would be hired and that these changes will apply to the existing staff members.

Chairman Yeager opened the public hearing. There being no comments, Chairman Yeager closed the public hearing.

MOTION: Commissioner Warford made a motion to approve the Zoning Ordinance Text Amendment relating to Zoning Administrator References/Multiple Sections of Title 14. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:33 p.m. to meet again on January 22, 2014.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Lee Yeager
Chairman

Community Development

From: Jacelyn Brown [REDACTED]@com>
Sent: Wednesday, December 18, 2013 11:29 AM
To: cobplan@nd.gov
Subject: proposal

Good morning! I am writing to let the city know that I am very against this proposal. We have an up and coming neighborhood in Sonnet Heights and we do not need a very large apartment building in the area. I realize that the 20 units might be there no matter what, but the city should NOT change the allotment to 36 units. That regulation was there for a reason and it should not be changed. We have very small children and had to use every penny we had to buy our house and we want the best neighborhood for them to grow up in. Thank you for the opportunity to be heard.

Sincerely,

Jacelyn Brown

Wollmuth, Jenny L.

From: Lee, Kim L.
Sent: Wednesday, December 18, 2013 4:39 PM
To: Wollmuth, Jenny L.
Subject: FW: Sonnet Heights

From: Berna Vetter [mailto: [REDACTED]]
Sent: Wednesday, December 18, 2013 4:27 PM
To: klee@nd.gov; cobplan@nd.gov
Subject: Sonnet Heights

Bismarck Planning & Zoning Commission:

This is Berna with Joe Vetter Const. I will not be able to attend tonight's meeting, but I would like to let you know that I **strongly oppose** this zoning change. I think a 36 unit apt. building is too large for this area and will not be good for the neighborhood. Please keep the residential area's nice places for families to be proud of their area, and do not have to look at a big apt. complex.

The developer new this was zoned for RM15 and should leave it as it is. I think it is only fair to the families living in this area. Please oppose this zoning change and keep Bismarck neighborhood's nice without big apt. complex's.

Thank You!

Berna Vetter

Community Development

From: Nathan Jones [REDACTED]
Sent: Wednesday, December 11, 2013 4:22 PM
To: cobplan@nd.gov
Subject: Edgewood Village proposal

This letter is intended for the public hearing regarding the proposal of Legacy Single Family Lots and Tess Imhoff. Tollberg Homes is a builder of single family homes in Edgewood 6th Addition and we own a number of lots and models in the neighborhood. We are supportive of granting the special use permit for the purpose of the child care center. Countless surveys are telling us that the trend is towards having more "walkable" communities. I believe that having child care within walking distance of our homes makes them more marketable and would be an asset not just to our neighborhood; but for Bismarck as well. Thank you for consideration of this matter.

Nathan Jones
Chief Operations Officer
Tollberg Homes
(651)208-0500 cell
(763)205-2037 office
www.tollberghomes.com

Community Development

From: george gerhardt [REDACTED]
Sent: Wednesday, December 18, 2013 6:59 AM
To: cobplan@nd.gov
Subject: Child Care Center in Edgewood 7th addition

To Whom It May Concern:

I would come to the meeting this evening but I have another commitment.

I am writing in reference to the child care facility in Edgewood 7th Addition. We are moving to Edgewood Village in a patio home in the spring. At the present we have a daycare across the street from us and is one of the reasons to be moving. It seems no one let us know at the time that a daycare was going to be opening in the Grandview addition or there would have been opposition against it.

When they first moved in they had bus loads of kids come for carnivals and had bake sale in the driveway. I had called different offices with the city and state and was always referred to another department and never got an answer. Finally we had to go to Burleigh County Social Services and get something some answers and have something done. They put up the fence that they were suppose to and did a lot of changes, BUT STILL NOT UP TO PAR. Because as long as there is not a constant check on them they do what they want. We know they have done updates and never got building permits and also have more kids that permitted. Not to long ago one of the neighbors found out that she is doing a preschool which I am sure is not legal. This use to be a nice house and now lawn is not kept up and sometimes not cut for weeks. I am sure this is not all day cares.

So who is to say after this day care starts running that after a while it will not be the same.

I feel that a day care should not be in a residential area, there are areas where they can open them. I feel that there is not a enough personnel to keep checking on the day care to make sure that they are up to code. Like we were never notified about one coming into our neighborhood. The value of your house has got to go down when you have this across the street from your home because of the traffic and the upkeep of the homes in the neighborhood.

This needs to be looked into instead of having to call the fire department who issues the license as I was told and never hearing from them, because I am sure they do not want to deal with it and getting a run around from everyone at the city level and the state level. We finally went to social services and to get them to check into this. I do not want another neighborhood go through what we are going through with this across the street from us.

These are new neighborhoods and I am sure there is a covenant and when there are made up they should be followed. If you want to open a business then you need to go to where you can open this business. Not buy the lot and then try to change the rules to fit your needs.

I feel if the city officials vote for this then they need to move next door or across the street from one or let them put one in their neighborhood.

